

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROL BAMONTE, as Administrator,
et al.,

Plaintiff,

vs.

DEBRAH LEE CHARATAN, as the
Nominated Executor of the Estate of
Robert Durst,

Defendant.

Case No. 7:22-cv-00795-KMK-JCM
Hon. Judith C. McCarthy

**CONFIDENTIALITY
STIPULATION AND PROPOSED
PROTECTIVE ORDER**

WHEREAS, the parties having agreed to the following terms of confidentiality, and the Court having found that good cause exists for the issuance of an appropriately tailored confidentiality order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby ORDERED that the following restrictions and procedures shall apply to the information and documents exchanged in response to the Subpoena Duces Tecum, dated August 18, 2023 (ECF Docket Entry No. 180), which was served by the Plaintiffs on the Los Angeles County District Attorney's Office ("Third Party") on August 22, 2023 ("the subpoena") :

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STIPULATED PROTECTIVE ORDER

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3 1. Counsel for any party may designate any document or
4 information, in whole or in part, as confidential if counsel determines, in good
5 faith, that such designation is necessary to protect the interests of the client in
6 information that is proprietary, a trade secret, or otherwise sensitive non-
7 public information ("Confidential Information"). Information and documents
8 designated by a party as confidential will be stamped "CONFIDENTIAL."

9 2. The Parties to this Stipulation and Order are the Plaintiffs, the
10 Defendant, and the Third Party, including all of its officers, directors,
11 employees (sworn and civilian), consultants, retained experts, and outside
12 counsel of record (and their support staffs).

13 3. Action refers to *Carol Bamonte, as Administrator, et al. v. Debrah*
14 *Lee Charatan, as the Nominated Executor of the Estate of Robert Durst*, United
15 States District Court, Southern District of New York, Case No. 7:22-cv-00795-
16 KMK-JCM, and any appeals through FINAL DISPOSITION. FINAL DISPOSITION
17 of the action is defined as the conclusion of any appellate proceedings, or, if
18 no appeal is taken, when the time for filing of an appeal has run. Except as set
19 forth below, the terms of this protective order apply through FINAL
20 DISPOSITION of the action.

21 4. Confidential Information is defined as information (regardless of how
22 it is generated, stored, or maintained) or tangible things that qualify for protection
23 under Federal Rule of Civil Procedure 26(c).

24 5. Challenging party is defined as a Party or Non-Party in this action that
25 challenges the designation of information or items under this Order.

26 6. Counsel is defined as outside counsel of record and house counsel (as
27 well as their support staff).

28 7. Designating party is defined as a Party or Non-Party in this action that

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STIPULATED PROTECTIVE ORDER

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1 designates information or items that it produces in disclosures or in responses to
2 discovery as "CONFIDENTIAL."

3 8. Disclosure or Discovery Material is defined as all items or
4 information, including but not limited to electronically stored information and
5 documents, regardless of the medium or manner in which it is generated, stored, or
6 maintained (including, among other things, testimony, transcripts, and tangible
7 things), that are produced or generated in disclosures or responses to the subpoena.

8 9. Non-party is defined as any natural person, partnership, corporation,
9 association, or other legal entity not named as a Party to this action. Nothing in this
10 Order shall give any Non-Party standing to intervene in this Action. Any Non-
11 Party who may seek judicial relief related to this Order must independently
12 establish a basis for its standing to intervene in the Action. However, nothing in
13 these provisions should be construed as prohibiting a Non-Party from seeking
14 judicial relief related to this Order by independently establishing a basis for its
15 standing to intervene in the Action.

16 10. Producing party is defined as a Party or Non-Party that produces
17 disclosure or discovery material in response to the subpoena.

18 11. Receiving party is defined as a Party in this action that receives
19 disclosure or discovery material from a producing party.

20 12. The Confidential information disclosed will be held and used by
21 the person receiving such information solely for use in connection with the
22 action.

23 13. In the event a party challenges another party's designation of
24 confidentiality, counsel shall make a good faith effort to resolve the dispute, and
25 in the absence of a resolution, the challenging party may seek resolution by the
26 Court. Nothing in this Protective Order constitutes an admission by any party that
27 Confidential Information disclosed in this case is relevant or admissible. Each
28 party reserves the right to object to the use or admissibility of the Confidential

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1 Information.

2 14. Documents designated as "CONFIDENTIAL" shall not be
3 disclosed to any person, except:

- 4 a. The requesting party and counsel, including in-house counsel;
5 b. Employees of such counsel assigned to and necessary to
6 assist in the litigation;
7 c. Consultants or experts assisting in the prosecution or
8 defense of the matter, to the extent deemed necessary by
9 counsel; and
10 d. The Court (including the mediator, or other person having
11 access to any Confidential Information by virtue of his or her
12 position with the Court). The parties should meet and confer if any
13 production requires a designation of "For Attorneys' or Experts'
14 Eyes Only."

15 15. Prior to disclosing or displaying the Confidential Information to
16 any person, counsel must:

- 17 a. Inform the person of the confidential nature of the
18 information or documents;
19 b. Inform the person that this Court has enjoined the use of the
20 information or documents by him/her for any purpose other than this
21 litigation and has enjoined the disclosure of the information or
22 documents to any other person; and
23 c. Require each such person to sign an agreement to be bound by
24 this Order in the form attached as Exhibit A.

25 16. The disclosure of a document or information without designating it
26 as "CONFIDENTIAL" shall not constitute a waiver of the right to designate such
27 document or information as Confidential Information. If so designated, the
28 document or information shall thereafter be treated as Confidential Information

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1 subject to all the terms of this Stipulation and Order.

2 17. Any Personally Identifying Information (“PII”) (e.g., social
3 security numbers, financial account numbers, passwords and information that
4 may be used for identity theft) exchanged in discovery shall be maintained by
5 the receiving party in a manner that is secure, confidential and shared only with
6 authorized individuals in a secure manner. Nothing herein shall preclude the
7 producing party from asserting legal claims or constitute a waiver of legal
8 rights and defenses in the event of litigation arising out of the receiving party’s
9 failure to appropriately protect PII from unauthorized disclosure.

10 18. Pursuant to Federal Rule of Evidence 502, the production of
11 privileged or work product protected documents or communications, electronically
12 stored information (“ESI”) or information, whether inadvertent or otherwise, shall
13 not constitute a waiver of the privilege or protection from discovery in this case or
14 in any other federal or state proceeding. This Order shall be interpreted to provide
15 the maximum protection allowed by Federal Rule of Evidence 502(d). Nothing
16 contained herein is intended to or shall serve to limit a party’s right to conduct a
17 review of documents, ESI or information (including metadata) for relevance,
18 responsiveness and/or segregation of privileged and/or protected information
19 before production.

20 19. Notwithstanding the designation of information as
21 “CONFIDENTIAL” in discovery, there is no presumption that such information
22 shall be filed with the Court under seal. For requests to file information under seal,
23 the parties shall follow the individual rules of the judge for whom the information
24 is being submitted, as well as Section 6 of the Court’s ECF Rules & Instructions.

25 20. Each Party or Non-Party that seeks to introduce information that was
26 designated as CONFIDENTIAL as evidence during trial must give a 7-day notice
27 to Each Party and Non-Party prior to attempting to introduce information that was
28 designated CONFIDENTIAL in order to provide Each Party and Non-Party an

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1 opportunity to respond and/or object to the introduction of information designated
2 as CONFIDENTIAL.

3 21. At the conclusion of litigation, Confidential Information and any
4 copies thereof shall be promptly (and in no event later than 30 days after entry of
5 final judgment no longer subject to further appeal) returned to the producing
6 party or, upon permission of the producing party, destroyed. Whether the
7 Confidential Information is returned or destroyed, the Receiving Party must
8 submit a written certification to the Producing Party (and, if not the same person
9 or entity, to the Designating Party) by the 30 day deadline that (1) identifies (by
10 category, where appropriate) all the Confidential information that was returned
11 or destroyed and (2) affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries or any other format reproducing or capturing
13 any of the Confidential information. Notwithstanding this provision, Counsel is
14 entitled to retain an archival copy of all pleadings, motion papers, trial,
15 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
16 and trial exhibits, expert reports, attorney work product, and consultant and
17 expert work product, even if such materials contain Confidential information.
18 Any such archival copies that contain or constitute Confidential information
19 remain subject to this Protective Order.

20 22. Nothing herein shall preclude the parties from disclosing material
21 designated to be Confidential Information if otherwise required by law or
22 pursuant to a valid subpoena.

23 23. Any violation of this Order may be punished by appropriate
24 measures including, without limitation, contempt proceedings and/or monetary
25 sanctions.

26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

27 DATED: December 9, 2023

1 Brian McCarthy

2 Brian Thomas McCarthy, Esq.

3 Attorneys for Plaintiff,

4 as Administrator of the Estate of KATHLEEN DURST; and JAMES

5 MCCORMACK, VIRGINIA MCKEON, and MARY HUGHES, as Co-

6 Administrators of the Estate of ANNE C. MCCORMACK, a Distributee of the Estate
of KATHLEEN DURST

7 DATED: _____

8 Larry Hatcher

9 Larry Hatcher, Esq.

10 William Hynes Mack, Esq.

11 Attorneys for Defendant.

12 DEBRAH LEE CHARATAN, as the Nominated Executor of the Estate of ROBERT
DURST

13 DATED: 12/11/23

14 Robert C. Leiford III

15 Robert C. Leiford III, Esq.

16 Tomas A. Guterres, Esq.

17 Attorneys for Third Party,

18 LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20 DATED: December 12, 2023

21 Judith C. McCarthy

22 JUDITH C. MCCARTHY

23 United States Magistrate Judge

EXHIBIT ANON-DISCLOSURE AGREEMENT

I, _____, acknowledge that I have read and understand the Confidentiality Stipulation and Protective Order in this action governing the non-disclosure of those portions of discovery material that have been designated as Confidential. I agree that I will not disclose such material to anyone other than for purposes of this litigation, and that at the conclusion of the litigation I will either return all discovery material to the party or attorney from whom I received it, or upon permission of the producing party, destroy such discovery material. By acknowledging these obligations under the Confidentiality Stipulation and Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____

Name (printed) Signature

Signed in the presence of:

(Attorney)